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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,853	03/04/2002	John Andrew Aiken JR.	5577-244	7731
20792	7590	08/09/2004	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC			LUU, LE HIEN	
PO BOX 37428			ART UNIT	
RALEIGH, NC 27627			PAPER NUMBER	
			2141	

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/087,853	<b>Applicant(s)</b> AIKEN ET AL.	
	<b>Examiner</b> Le H Luu	<b>Art Unit</b> 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03/04/02 - 04/02/04.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 10-16, 26-32 and 42-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 8, 17, 20, 24, 33, 36 and 40 is/are rejected.
- 7) ☐ Claim(s) 2, 3, 5-7, 9, 18, 19, 21-23, 25, 34, 35, 37-39 and 41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05/06/2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/4/02, 12/8/03</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> .           |

Continuation of Attachment(s) 6). Other: IDSs mail date: 2/17/04, 3/19/04, 4/2/04.

1. Claims 1-48 are presented for examination.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, 17-25, and 33-41, drawn to establishing connection based on port associated with single IP address, classified in class 709, subclass 227.
  - II. Claims 10-16, 26-32, and 42-48, drawn to selecting target based on workload distribution, classified in class 718, subclass 105.
3. The inventions are distinct, each from the other because of the following reasons:

Inventions Group I, Group II and Group III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group I has separate utility such as establishing connection based on port associated with single IP address, Group II has separate utility such as selecting target based on workload distribution, See MPEP § 806.05(d).
4. The inventions are distinct, each from the other because of the following reasons:
  - a. These inventions have acquired a separate status in the art as shown by their different classification

- b. The search required for one Group is not required for the other Groups

For the reasons above restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Mr. Timothy J. O'Sullivan on 08/02/2004 a provisional election was made without traverse to prosecute the invention of GROUP I, claims 1-9, 17-25, 33-41. Affirmation of this election must be made by applicant in responding to this Office action. Claims 10-16, 26-32, and 42-48 withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is requested to formally cancel the non-elected claims.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by

a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

9. Figures 1-3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

10. Applicant is requested to update status of copending applications in the specification of this patent application.

11. Claim 7 is objected to because of the following informalities: claim 7 depends on itself. Appropriate correction is required. For purpose of examination, Examiner assume that claim 7 depends on claim 6.

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for

Art Unit: 2141

patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

13. Claims 1, 4, 8, 17, 20, 24, 33, 36, and 40 are rejected under 35 U.S.C. § 102(e) as being anticipated by Aiken, Jr. et al. (Aiken) Pub. No. US 2002/0143954.

14. As to claim 1, Aiken teaches the invention as claimed, including a method of communicating with a plurality of application instances executing on a cluster of data processing systems utilizing a single Internet Protocol (IP) address, the method comprising the steps of:

notifying a distributing data processing system if an application opens a listening socket utilizing any port associated with the single IP address (page 5 para. [0053-0055]);

identifying potential target data processing systems in the cluster of data processing systems at the distributing data processing system based on the notification (page 3 para. [0023]; page 5 para. [0050]);

receiving a request to establish a connection to the single IP address and a port associated with the single IP address at the distributing data processing system (page 4 para. [0037]);

selecting a data processing system from the potential target data processing systems if the port associated with the request is associated with a potential data processing system (page 4 para. [0038]); and

routing communications for the connection to the selected data processing system (page 4 para. [0038]).

15. As to claim 4, Aiken teaches the step of selecting a data processing system comprises selecting a data processing system to distribute workload between the potential target data processing systems (page 4 para. [0037-0038]; page 5 para. [0046])

16. As to claim 8, Aiken teaches the distributing data processing system comprises a routing communication protocol stack (page 2 para. [0018]).

17. Claims 17, 20, 24, 33, 36, and 40 have similar limitations as claims 1, 4, and 8; therefore, they are rejected under the same rationale.

18. Claims 2-3, 5-7, 9, 18-19, 21-23, 25, 34-35, 37-39, and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu, whose telephone number is (703) 305-9650. The examiner can normally be reached Monday through Friday from 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached at (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7240.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

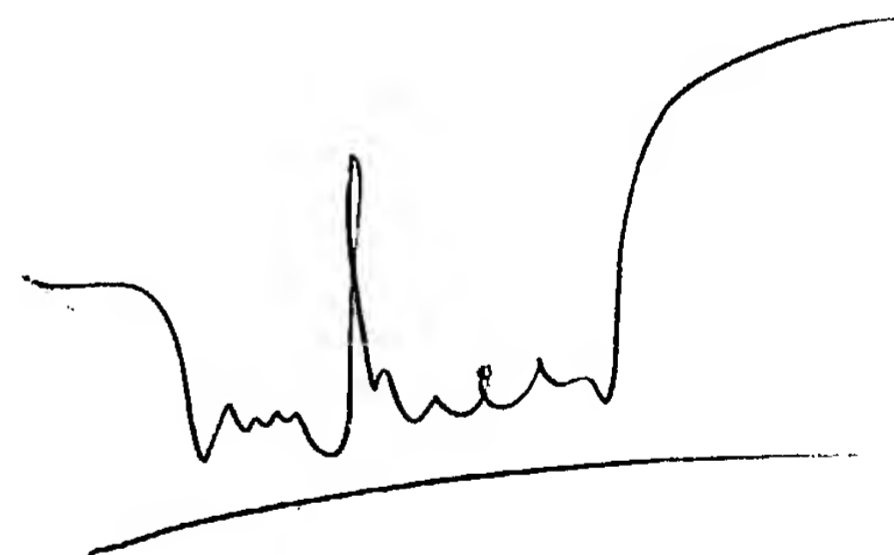
or faxed to:

(703) 872-9306, (for formal communications; please mark  
"EXPEDITED PROCEDURE").

Or:

(703) 872-9306 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal  
Drive, Arlington, VA., Sixth Floor (Receptionist).

A handwritten signature in black ink, appearing to read 'Le Hien Luu', written over a horizontal line.

LE HIEN LUU  
PRIMARY EXAMINER  
August 03, 2004